



# **CINCINNATI ASSOCIATION FOR THE BLIND**

2045 Gilbert Avenue  
Cincinnati, Ohio 45202-1490  
513-221-8558 ■ Fax: 513-221-2995  
Toll free: 1-888-687-3935

**Offering blind and visually impaired people the opportunity to seek independence**

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February 8, 2005

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Re: Docket No. 2004-01-01: Governance Standards for Central  
Nonprofit Agencies and Nonprofit Agencies Participating in the  
Javits-Wagner-O'Day Program Notice of Proposed Rulemaking  
and Request for Comments (69 Fed. Reg. 65395 (November  
12, 2004)).

Dear Sir or Madam:

The purpose of this letter is to provide to you comments concerning  
this proposed rulemaking.

The Cincinnati Association for the Blind (CABVI) is a non-profit Ohio  
corporation providing a broad range of services to blind and visually impaired  
persons. Among these services is its Industries Program, which employs  
approximately 50 blind persons under the Javits-Wagner-O'Day Act (JWOD).  
CABVI also operates a base supply store employing two blind persons at  
Wright Patterson Air Force Base in Dayton, Ohio. CABVI's staff looks to a  
Board of Trustees for governance; I currently service as the Board's  
President.

We are concerned that the costs of compliance and the degree of  
oversight of governance would diminish, rather than enhance, JWOD's  
mission. Its mission is:

Increasing employment  
opportunities for blind and severely  
disabled persons.

CABVI and its Board strongly believe in this mission and urge the  
Committee to refrain from implementing the proposed regulations.

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Email: [info@cincyblind.org](mailto:info@cincyblind.org) ■ Website: [www.cincyblind.org](http://www.cincyblind.org)

Member, National Industries for the Blind ■ Accredited Member, National Accreditation Council  
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If adopted, the proposed regulations will divert time, energy, and resources from services to the blind and severely disabled by requiring redundant record-keeping. They would also require adherence to artificial standards of governance that may well inhibit achieving JWOD's mission. The proposed regulations far exceed what may be needed to address allegations of "isolated instances" of excessive compensation, a "perceived" lack of transparency in financial reporting, or a lack of "formal guidelines" requiring independent boards.

Excessive costs of compliance are a major concern. The proposed regulations require the filing of "the same as what is required under Part IV of IRS Form 990" by December 1 of each year. This report is to be for the "fiscal year" ending on September 30. This may present significant practical difficulties for a nonprofit with a fiscal year ending on September 30.

But for a nonprofit, like CABVI, with a fiscal year ending on December 31,<sup>1</sup> it would require a great deal of redundant effort, without any gain in fiscal transparency. CABVI closes its books after December 31. Its financial statements are reviewed by our staff and the Board's Finance Committee. Outside auditors from a public accounting firm prepare audited financial statements. These records are available to the public. Four and one-half months later IRS Form 990 is filed.

The proposed regulations would require that CABVI perform all of these steps a second time to adhere to a mandatory September 30 fiscal year reporting requirement. The books would have to be closed as of September 30, reviewed by CABVI staff and Board, and audited by outside accountants sufficiently quickly to permit the equivalent of an IRS Form 990 (revised Committee Form 403) to be filed by December 1 of each year. The financial cost of this duplicative effort would be significant. Time, energy, and other resources would be diverted from working to enhance employment opportunities for blind people at CABVI.

The benefit, if any, would be that CABVI's "central nonprofit agency," National Industries for the Blind, would receive Form 990 information before it is provided to the IRS. A nonprofit agency such as CABVI should not be required to bear the significant expense of gathering and filing this information twice to two different agencies. A practical solution is to require a nonprofit agency to file the IRS Form 990 information with the Committee at the same time it is filed with the IRS. This avoids the redundancy of gathering the information twice and provides it to the Committee as soon as it is available.

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<sup>1</sup> Changing to a September 30 fiscal year for all purposes would result in the cost of making that transition and may conflict with other requirements. The benefit of such a change would not be offset by the costs and risks associated with it.

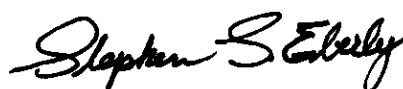
The listing of criteria in proposed Section 51-2.10 has two main flaws. First, it would impose a single formula for good governance, when a number of models may be equally effective in producing efficiency, eliminating conflicts of interest, and promoting financial transparency. Portions of the imposition of a one-size-fits-all series of criteria may be entirely inappropriate because of many factors, including the history of the agency, its resources, and the availability of persons willing to serve on the board. What if, for example, the history of an agency shows that it was founded by members of a family who have successfully funded, governed, and worked for it for years? Should no one from that family work at the agency and be on its board? What if the agency does not have sufficient resources to hire an outside accounting firm to do a financial audit? What if no "financial expert" is willing to serve on the board? A top-down mandate of the sort contained in the proposed regulations does not take into account situations of this nature and many others that cannot be anticipated. Mandated structures diminish the flexibility a board needs to deal with issues that come before it and may make it more difficult to recruit and retain board members to meet the needs of the particular agency.

Second, the criteria listed are vague and, if adopted, will lead to confusion. Imprecise terms used include "family members" (how far?), "turns over Board . . . membership" (How frequently? All or some of the Board? What about long-term, productive members?), and "financial expert" (How defined?). These terms are likely to result in disputes that will further siphon time, energy, and resources from the nonprofit agency's mission of helping the blind or severely disabled.

Finally, for many agencies, such as CABVI, imposing additional governance standards results in increased costs with little or no increased accountability or transparency. CABVI meets the standards for being a nonprofit corporation certified by the State of Ohio. The National Accreditation Council accredits CABVI. NAC scrutinizes CABVI's board structure and financial reporting as a part of the accreditation process. The proposed regulations impose an additional burden that is akin to another accreditation. This will divert resources from CABVI's mission without meaningfully improving governance or financial reporting.

The proposed regulations do not pass a reasonable cost-benefit analysis. The costs far outweigh any benefit. The proposed regulations should not be adopted.

Very truly yours,

A handwritten signature in black ink, reading "Stephen S. Eberly". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Stephen S. Eberly  
President  
Board of Trustees

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